

EXHIBIT B

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Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4

5 IN RE:)
6)
7 CUSTOMS AND TAX ADMINISTRATION OF)
8 THE KINGDOM OF DENMARK)
9 (SKATTEFORVALTNINGEN) TAX REFUND)
10 SCHEME LITIGATION)
11)
12)

13

14

15 C O N F I D E N T I A L

16

17

18 REMOTE VTC VIDEOTAPED EXPERT DEPOSITION UNDER ORAL
19 EXAMINATION OF
20 BRUCE DUBINSKY

21

22

23

24

25

DATE: March 29, 2022

REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 the ultimate conclusion of whether there was
2 fraud will be up to the judge or jury in this
3 case.

4 Q Okay. I understand your report
5 speaks for itself, sir, but this is a
6 deposition so I'm going to be asking you
7 questions about your report.

8 Okay? You understand that, right?

9 A Yes.

10 Q Okay. And you just said a moment
11 ago that you're not reaching any legal
12 conclusions. You're not an attorney.

13 Right?

14 A That's correct. I'm not.

15 Q Are you offering any opinion in
16 this case about whether the plans were the
17 beneficial owners of the dividends?

18 MR. WEINSTEIN: Objection to form.

19 A Again, I think that's asking for a
20 legal conclusion, and I'm not issuing that
21 legal conclusion.

22 Q Okay. And so you're not offering
23 any opinion, either about whether the plans
24 were the beneficial owner of dividends under
25 Danish tax law.

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1 Right?

2 MR. WEINSTEIN: Objection, form.

3 A Again, I'm not opining anything as
4 to Danish tax law. I'm not a Danish tax law
5 expert and not being offered as one.

6 Q You're not an expert on what it
7 means to be the beneficial owner of dividends
8 under Danish tax law.

9 Right?

10 A I would agree with you.

11 Q Okay. And you're not offering any
12 opinion about legal ownership under Danish
13 law.

14 Right?

15 A I would agree with you. That would
16 call for a legal conclusion.

17 Q And similarly, you're not offering
18 an opinion about legal ownership under U.S.
19 law, then.

20 Right?

21 A I would agree with you again. That
22 would call for a legal opinion.

23 I'm not a lawyer.

24 Q Okay. And you're not offering an
25 opinion about the intent of the defendants in

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1 this case, are you?

2 A No, I'm not.

3 Q And you're also not offering an
4 opinion about whether SKAT reasonably relied
5 on the reclaim applications at issue in the
6 case.

7 Right?

8 A That is correct. I am not.

9 Q Okay. Mr. Dubinsky, have you ever
10 worked as a trader?

11 A I have not worked as a trader, no.

12 Q So you don't have any experience in
13 trading Danish securities.

14 Is that a fair statement?

15 A I would agree with you, yes.

16 Q Have you ever engaged in dividend
17 arbitrage trading?

18 A I have not.

19 Q Do you have any experience in
20 arranging structured transactions?

21 MR. WEINSTEIN: Objection to form.

22 A I have not. I'm just trying to
23 think.

24 I have not been involved in
25 arranging structured transactions.

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1 individual clients and pension plans,
2 retirement plans on investments.

3 Q And at Duff & Phelps, you did this
4 type of work that you do now.

5 Is that right?

6 A No, I did not. So when I joined
7 Duff & Phelps, I let my license lapse at that
8 point because I was not doing that work
9 anymore.

10 And just to maintain the
11 registration requirements was too much red
12 tape. So I let the license lapse at that
13 point.

14 Q So what did you do at Duff &
15 Phelps?

16 A I was a managing director at Duff &
17 Phelps in their disputes and investigation
18 practice, and so I handled everything from
19 investigations to commercial disputes, expert
20 witness work.

21 That was my role at Duff & Phelps.

22 Q Okay. And in this matter, you were
23 retained to do a forensic accounting of the
24 cash flows of the tax refund payments paid
25 out by SKAT.

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1 Is that right?

2 A Among other things, yes, that was
3 part of what I was asked to do.

4 Q Okay. And your forensic accounting
5 was of the payments that allegedly went to
6 Solo clients.

7 Right?

8 A That portion of the work was, yes,
9 looking at the refund claim payments paid by
10 SKAT and the money flow from those payments,
11 where did the money go.

12 Q You did not do a forensic
13 accounting of SKAT, did you?

14 A No, I did not.

15 Q Okay. You did not do a forensic
16 accounting to assess whether the withholding
17 tax associated with the refund claims in this
18 case was actually paid to SKAT.

19 Right?

20 A No, I did not.

21 Q Did you develop a view of whether
22 SKAT collected dividend withholding tax from
23 any of the sellers in the trades associated
24 with this case?

25 MR. WEINSTEIN: Objection to form.

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1 litigation?

2 A That's my understanding to this
3 particular litigation, yes.

4 Q Okay. You had access to a set of
5 documents that came from an entity called
6 Elysium Global.

7 Right?

8 A Yes.

9 Q Okay. And do you have any
10 understanding of what those documents
11 represent?

12 A I think in general, my
13 understanding was those were documents that
14 Solo had maintained that was part of a Solo
15 umbrella of companies. So there were a lot
16 of different documents in that database.

17 But they were business records
18 related to Solo and various entities under
19 Solo's control.

20 Q Okay. Why don't you open up your
21 report, your initial report, which is
22 Exhibit 5200.

23 A Okay.

24 Q And I want you to go to Footnote 5
25 on a Page 8.

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1 at a custodian that actually holds custody of
2 them, yes.

3 Q Let's go to your opening report,
4 which is Exhibit 5200 at Page 39.

5 A Do you have that in front of you?

6 Q I do.

7 A Okay. And I'm going to point you
8 to Paragraph Roman Numeral 6, Opinion
9 Number 1.

10 A Do you see that?

11 Q I do.

12 A And this is the one in all caps and
13 bolded.

14 "There is no evidence that the
15 plans ever owned actual shares of Danish
16 securities from their Solo trades or received
17 actual dividends issued by the Danish
18 companies whose stock was purportedly used in
19 the Solo trades."

20 A Do you see that?

21 Q Yes.

22 A Ownership is a legal concept, isn't
23 it?

24 Q I think it certainly -- well, it's
25 an accounting and legal concept. But from

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1 the standpoint of in the ultimate
2 determination who had legal title, yes, that
3 would be a legal determination.

4 Q And that's not a determination that
5 you're qualified to make.

6 Right?

7 A Again, I'm not a lawyer. I was
8 doing a forensic accounting investigation to
9 determine whether there was evidence that
10 these shares actually existed, and that's
11 what I was discussing.

12 Q Okay. But this doesn't -- this
13 opinion doesn't talk about whether the shares
14 actually existed.

15 It talks about ownership, doesn't
16 it?

17 MR. WEINSTEIN: Objection to form.

18 A Well, the heading says what it
19 says. But as you go through the report, the
20 basis for the opinion is that I saw no
21 evidence to support that the shares actually
22 existed.

23 And therefore, if the shares didn't
24 exist, certainly from a forensic accounting
25 standpoint, the plans couldn't have owned

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1 not -- there was no evidence that the shares
2 existed. And therefore, the dividends
3 weren't -- couldn't have existed, weren't
4 paid, and that was my conclusion.

5 Q I'm asking you regarding your
6 statement regarding ownership, sir. And I'm
7 asking you whether it was under U.S.
8 principles of ownership.

9 What is your answer to that
10 question?

11 A Again, I think you're asking for a
12 legal conclusion and I'm not here to give you
13 a legal opinion on -- I'm here to tell you
14 what I did and under what basis that I
15 opined.

16 Q So the concept of ownership in your
17 Opinion Number 1, you're not willing to tell
18 me under what principle you're giving that
19 opinion, whether it's U.S., EU, Danish, or
20 whatever?

21 MR. WEINSTEIN: Objection to form,
22 asked and answered.

23 A Again, I'm not here to issue a
24 legal opinion. I think that would call for a
25 legal opinion.

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1 think certainly I'd have to go back through
2 the report.

3 I think I talk about the
4 transaction and the fact that the LLCs, most
5 of them, were newly formed, the pension plans
6 didn't have liquidity. So in the context of
7 that, someone would certainly have to
8 question how could they possibly be doing
9 this type of transaction.

10 But I'm not opine -- I can't opine
11 on what people thought at that time, that
12 those are going to have to be facts that come
13 from fact witnesses at trial.

14 I can't jump into their head.

15 Q When you say "someone would have to
16 question," is that a legal requirement that
17 they'd have to question it --

18 A No, I think just --

19 MR. WEINSTEIN: Objection.

20 Q -- or is that just your opinion?

21 A Just general common sense. I mean,
22 if you -- you know, it's just -- as a newly
23 formed pension plan with little or no money,
24 call it 10,000, \$40,000, how in the
25 world -- if I'm putting myself, and I get

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1 representations the SKAT corporate designee
2 made during his testimony.

3 Correct?

4 A That is correct. I didn't see his
5 testimony and didn't read it.

6 Q Let's go to -- back to your opening
7 report, Exhibit 5200, Paragraph 131.

8 A Okay.

9 Q It's on Page 39, I think.

10 A Okay.

11 Q Can you read that paragraph to
12 yourself? And I'll ask you some questions.

13 A Which paragraph was it?

14 Q 131.

15 A Okay.

16 (Witness reviewing.)

17 Okay.

18 Q Just a question for you.

19 You can see, in the first sentence
20 of that paragraph, you reference "actual
21 dividends?"

22 A Yes.

23 Q When you say here that the pension
24 plans did not receive any actual dividends,
25 you're not offering any kind of opinion about

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1 the plans' entitlement to dividends, are you?

2 A That's correct. The -- I'm sorry.

3 Something just beeped.

4 I think that's a legal conclusion.

5 In that regard, I was just looking for
6 evidence whether the plans actually received
7 any actual dividends in this transaction.

8 Q Let's go back to Exhibit 5217.

9 A Okay.

10 Q And we'll go to the last page of
11 that document.

12 A The one Bates --

13 Q "Cash Equity." Sorry.

14 A Yeah, I was going to say, the one
15 ending in 75374 Bates number?

16 Q Yes.

17 A Okay.

18 Q The price you see there, "Trade
19 Price, 586.3316," that was a market price at
20 that time.

21 Right?

22 A I don't recall specifically on this
23 whether that was the closing price on that
24 day. Typically, the trades were purportedly
25 executed or approved during the day and then

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1 know one way or another where these documents
2 went, so I can't say.

3 Q And in order to determine what you
4 called the "closed loop," you needed to see
5 these documents, didn't you?

6 A Correct. These were the steps of
7 the purported transaction.

8 Q Mr. Dubinsky, you're not an expert
9 in trade settlement operations.

10 A Right?

11 A That is correct. I wouldn't
12 consider myself an expert in trade
13 settlement.

14 I do have some experience with it,
15 but I'm not being proffered here and I
16 understand somebody else is dealing with
17 trades and settlement issues.

18 Q Do you understand what "net
19 settlement" is?

20 A As a general concept, yes.

21 Q It's a -- two or more transactions
22 that offset each other in settlement.

23 A Is that right?

24 A Well, I think that's a very general
25 description. You know, it's a -- very

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1 supposed to result in a transfer of
2 securities from one securities account to
3 another in the books of the settlement
4 internalizer without any external parallel
5 securities movement along the holding chain."

6 Do you see that?

7 A Yes, I see that.

8 Q This description of internalization
9 reflects that in some context the settlement
10 instruction may result without involving
11 external parties in a holding chain.

12 Correct?

13 A Again, this is the first time I'm
14 seeing this document. I haven't gone through
15 it. I'm not a -- I'm not professing to be an
16 expert in net settlement.

17 So without going through this and
18 trying to decipher it, I don't know. I mean,
19 it says what it says and you read it.

20 Q You don't know whether or not it
21 reflects that in some context, settlement may
22 occur without any external parallel
23 securities movement along the holding chain?

24 A That's what it seems to indicate,
25 under certain circumstances. I don't know,

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1 A Again, you're asking for a legal
2 conclusion. I'm just not comfortable giving
3 you one.

4 Q So you would agree with me that
5 beneficial ownership is a legal question?

6 A My answer was, in most contexts
7 where I've seen it, it has been a question of
8 law and interpretation of law to apply that.
9 I've seen it in other contexts, but that's
10 generally where I have seen the term.

11 Q Okay.

12 MR. BONGIORNO: I don't have any
13 more questions.

14 Thank you, Mr. Dubinsky.

15 THE WITNESS: Thank you.

16 MR. BONGIORNO: I don't know if
17 anybody else has questions, but I don't
18 have any more.

19 MR. LOPICCOLO: Hey, this is Joe
20 LoPiccolo. Can you hear me?

21 THE WITNESS: Yes, but I can't see
22 who is talking.

23 MR. LOPICCOLO: Oh, wait. Sorry.
24 Let me see if this works. Hold on.

25 (Whereupon a discussion was held